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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,632	01/24/2005	Andrea Calvi	007511.00014	7405
22907 7590 02/18/2009 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
BENOIT, ESTHER				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
02/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,632

Applicant(s)

CALVI ET AL.

Examiner

ESTHER BENOIT

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9, 10, 12-21, 23 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 10, 12-21, 23 and 32-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/18/2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendments

1. Claims 1-7, 9, 10, 12-21, 23 and 32-39 are pending in this application. Claims 1-7, 9, 10, 12-21, and 23 been amended. Claims 8,11, 22, and 24-31 have been cancelled. Claims 32-39 have been newly added.

Response to Arguments

2. Applicant's arguments, see Remarks, filed 12/18/2008, with respect to the rejection(s) of claim(s) 1 and 13 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection, 35 USC 103(a), is made in view of Minde et al. (WO 00/33511).

Drawings

3. The drawings were received on November 18, 2008. These drawings are now accepted...

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 9, 10, 12-21, 23 and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedrich et al. (5,958,009), in view of Minde et al. (WO 00/33511).

With respect to claim 1, Friedrich discloses:

- monitoring operation of an application by a monitoring apparatus through a network interface (Figure 3, "Analyzer" and Col. 8, lines 37-44)
- storing network data received through the network interface in a buffer of the monitoring apparatus, the network data indicative of a behavior of the network (Col. 8, lines 37-62);
- transmitting from the monitoring apparatus, the stored network data to a remote network archive (Col. 10, lines 62-67).

Friedrich does not disclose receiving a trigger signal at the monitoring apparatus from a remote network entity upon in response to a critical situation corresponding to the quality of service of the application, and in response to receiving the trigger signal.

However, Minde discloses receiving a trigger signal at the monitoring apparatus from a remote network entity upon in response to a critical situation corresponding to the quality of service of the application, and in response to receiving the trigger signal (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

With respect to claim 2, Friedrich does not disclose wherein the critical situation is detected based on data from a plurality of monitoring apparatuses.

However, Minde discloses wherein the critical situation is detected based on data from a plurality of monitoring apparatuses (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to detect critical situations based on monitoring multiple applications, *because* it will allow the network to know the status of its running applications from different points.

With respect to claim 3, Friedrich discloses measuring the data indicative of the behavior of said network in synchronized fashion with at least one other monitoring apparatus (Col. 5, lines 11-18)

With respect to claim 4, Friedrich discloses wherein the archive is configured to store data from a plurality of monitoring apparatuses. (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*)

With respect to claim 5, Friedrich does not disclose the network entity from which the trigger signal is received includes a centralized coordination apparatus configured to transmit trigger signals to a plurality of monitoring apparatuses.

However, Minde discloses the network entity from which the trigger signal is received includes a centralized coordination apparatus configured to transmit trigger signals to a plurality of monitoring apparatuses (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde transmit the signals to multiple monitoring applications, *because* it will allow the network to know the status of its running applications from different points.

With respect to claim 6, Friedrich discloses associating an activation function configured to test the operation of the application to a control function configured to detect the critical situations relating to the quality of service (Abstract)

With respect to claim 7, Friedrich discloses the activation function and said control function co-operate with each other according to an agent/server configuration, in which said activation function acts as an agent and said control function acts as a server (Abstract)

With respect to claim 9, Friedrich discloses storing data indicative of the behavior of said network includes storing data relating to a given time window (Col. 5, lines 11-18)

With respect to claim 10, Friedrich does not disclose at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel.

However, Minde discloses at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

With respect to claim 12, Friedrich does imply the monitoring apparatus includes a filtering function configured to intercept a critical situation detected that is transmitted on said network (Col. 10, lines 62-67)

With respect to claim 13, Friedrich discloses:

- at least one activating apparatus for configured carry out sessions at the application level on said network (N), (Col. 5, lines 8-14, *the computer system*)
- at least one monitoring apparatus configured to measure and store data indicative of the behavior of said network (Figure 3, "Analyzer" and Col. 8, lines 37-44)
- and a collecting apparatus configured to collect, said data indicative of the behavior of the network measured and stored in said at least one monitoring apparatus (Figure 3, "Collector, and Col. 8, lines 9-13))

Friedrich does not disclose at least one testing apparatus separate from the at least one monitoring apparatus, configured to detect a critical situation related to said quality of service and to generate, in response to said critical situation, a trigger signal

However, Minde discloses generating a trigger signal in response to a critical situation corresponding to the quality of service of the application (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to generate a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

With respect to claim 14, Friedrich discloses a plurality of said monitoring apparatuses configured to measure and store said data indicative of the behavior of the network (Col. 5, lines 11-18)

With respect to claim 15, Friedrich discloses a plurality of synchronization modules associated with said plurality of monitoring apparatuses to measure said data indicative of the behavior of said network (N) in synchronized fashion (Col. 5, lines 11-18)

With respect to claim 16, Friedrich discloses a memory configured to store said data indicative of the behavior of said network (Col. 5, lines 11-18), and a transmission module configured to transmit said data indicative of the behavior of said network to

said collecting apparatus in response to said trigger signal (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*)

With respect to claim 17, Friedrich does not disclose a central management apparatus separate from the at least one monitoring apparatus, wherein the central management apparatus is configured to receive said trigger signal from said at least one testing apparatus and to broadcast said trigger signal to said at least one monitoring apparatus.

However, Minde discloses the network entity from which the trigger signal is received includes a centralized coordination apparatus configured to transmit trigger signals to a plurality of monitoring apparatuses (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde transmit the signals to multiple monitoring applications, *because* it will allow the network to know the status of its running applications from different points.

With respect to claim 18, Friedrich discloses at least one activating apparatus and said at least one testing apparatus mutually co-operate according to a general agent/server configuration, in which said activating apparatus acts as agent and said verification apparatus acts as server (Abstract)

With respect to claim 19, Friedrich discloses at least one monitoring apparatus is configured to monitor for the data through at least one interface used by an application in the network (Abstract)

With respect to claim 20, Friedrich discloses at least one monitoring apparatus comprises a memory dimensioned to store at least a portion of the data indicative of the behavior of said network relating to a given time window (Abstract)

With respect to claim 21, Friedrich does not disclose at least one transmission channel to forward: said trigger signal to at least one monitoring apparatus, and said data indicative of the behavior of the network from said at least one monitoring apparatus.

However, Minde discloses at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

With respect to claim 23, Friedrich does imply the monitoring apparatus includes a filtering function configured to intercept a critical situation detected that is transmitted on said network (Col. 10, lines 62-67)

With respect to claim 32, Friedrich discloses:

- monitor operation of an application through a network interface (Figure 3, "Analyzer" and Col. 8, lines 37-44).

- store network data received through the network interface in a buffer of the apparatus, the network data indicative of a behavior of the network (Col. 8, lines 37-62);
- transmitting the stored network data to a remote network archive (Col. 10, lines 62-67).

Friedrich does not disclose receiving a trigger signal from a remote network entity in response to a critical situation corresponding to the quality of service of the application, and in response to receiving the trigger signal.

However, Minde discloses receiving a trigger signal at the monitoring apparatus from a remote network entity upon in response to a critical situation corresponding to the quality of service of the application, and in response to receiving the trigger signal (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

With respect to claim 33, Friedrich discloses the apparatus is a monitoring apparatus and wherein the critical situation is detected based on data from a plurality of monitoring apparatuses (Col. 5, lines 11-18).

With respect to claim 34, Friedrich discloses the computer readable instructions, when executed, further cause the apparatus to measure the data indicative

of the behavior of said network in synchronized fashion with at least one other apparatus in the network (Col. 5, lines 11-18).

With respect to claim 35, Friedrich discloses the archive is a centralized archive storing data from a plurality of network apparatuses (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*).

With respect to claim 36, Friedrich does not disclose the network entity from which the trigger signal is received includes a centralized coordination apparatus configured to transmit trigger signals to a plurality of network apparatuses

However, Minde discloses the network entity from which the trigger signal is received includes a centralized coordination apparatus configured to transmit trigger signals to a plurality of monitoring apparatuses (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde transmit the signals to multiple monitoring applications, *because* it will allow the network to know the status of its running applications from different points.

With respect to claim 37, Friedrich discloses:

- a processor (Col. 5, lines 8-14, *the computer system*) ;
- a buffer (Col. 8, lines 37-62).
- monitor operation of an application through a network interface (Figure 3, "Analyzer" and Col. 8, lines 37-44).

- store network data received through the network interface in the buffer, the network data indicative of a behavior of the network (Col. 8, lines 37-62).
- transmitting the stored network data to a remote network archive (Col. 10, lines 62-67).

Friedrich does not disclose receiving a trigger signal from a remote network entity in response to a critical situation corresponding to the quality of service of the application, and in response to receiving the trigger signal.

However, Minde discloses receiving a trigger signal at the monitoring apparatus from a remote network entity upon in response to a critical situation corresponding to the quality of service of the application, and in response to receiving the trigger signal (pg. 8, lines 29-30 and pg. 9, lines 1-10)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Friedrich with the teachings of Minde to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

With respect to claim 38, Friedrich discloses the computer readable instructions, when executed, further causing the apparatus to measure the data indicative of the behavior of Said network in synchronized fashion with at least one other network apparatus (Col. 5, lines 11-18).

With respect to claim 39, Friedrich discloses the remote network archive is configured to receive data from a plurality of network apparatuses (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.
February 12, 2009

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2442